

SUMMARY OF ETHICS RULES FOR PERSONS CONSIDERING EMPLOYMENT WITH THE UNITED STATES DEPARTMENT OF COMMERCE



2022

ETHICS LAW AND PROGRAMS OFFICE
OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE
202-482-5384 – ethicsdivision@doc.gov – www.commerce.gov/ethics

PUBLIC SERVICE IS A PUBLIC TRUST

Employment with the Federal Government can be rewarding, providing an opportunity to formulate and implement policies and programs that will have a significant impact on Americans in all walks of life. This is particularly true regarding service in the U.S. Department of Commerce, which has a broad range of responsibilities and positions for persons with a wide variety of backgrounds. However, with this responsibility come obligations. Public service is a public trust and Federal employees are subject to rules that differ significantly from those that apply to most persons in the private sector and in other public sector positions, such as with Congress or a state or local government.

The importance of adhering to these rules and to consider the perception to the public of one's actions is particularly important to an appointee to a position with policy-making responsibilities. The actions of such appointees reflects not only on them personally, but on the Department and the Presidential Administration.

This handout is a summary of ethics rules that will apply to you if you accept a position with the Federal Government.

If you have questions about any of these rules, or their application to a specific situation, please contact an ethics official; an attorney can be reached at ethicsdivision@doc.gov or 202-482-5384.

FINANCIAL HOLDINGS

In the Department of Commerce, there are no specific investments that employees are barred by law from holding or obtaining (other than a bar on United States Patent and Trademark Office employees obtaining interests in a patent). However, depending on your position, some investments may substantially limit your activities due to conflict of interest rules and would need to be divested shortly after your appointment (and not later re-obtained) in order to ensure that you may fully perform the duties of your position.

Disqualification Requirement

A conflict of interest statute provides that a Federal employee may not work on any matter as a Government official if Government action regarding that matter would affect the employee's personal financial interests or those of the employee's spouse or minor children. This means that once appointed you may not work on a policy or program that will affect a company in which you (or your spouse or minor child) owns stock, including a policy or other matter that would affect the company as a member of an industry sector or other group, with some exceptions. This restriction does not apply to stock holdings of \$15,000 or less (if the stock is traded on a U.S. exchange) or stock held through a diversified mutual fund. However, other holdings, including stock options, partnership interests, real estate investments, could result in the need to disqualify yourself from participating in important matters before the Department. If such disqualification will so limit you that you cannot effectively perform in your Federal position, you (or your spouse or child) may need to divest the financial interest.

Selling Financial Holdings to Avoid A Conflict of Interest

If you (or your spouse or children) are required to sell a financial interest to avoid a conflict of interest, there is a procedure to defer any capital gains taxes on the proceeds from such a sale, depending on the nature of the asset and how the proceeds will be reinvested. You should speak to a Commerce ethics official if you anticipate the need to sell any asset. Do not sell any holding prior to your appointment or before talking to an ethics official if you think you may want to take advantage of the opportunity to defer payment of taxes. To receive the tax benefit of a certificate of divestiture, you must reinvest the proceeds from the sale of such property in diversified investment funds or obligations of the United States.

Acquiring Financial Interests

If you divest an asset to avoid a conflict of interest, you may not, during your employment at the Department, acquire assets that are substantially similar (such as securities in companies operating in the same business or industry sector) to those you divested. In addition, you should not acquire assets during your employment that will

require your disqualification from significant duties. You will be prohibited by statute from participating in an initial public offering (IPO), from engaging in insider trading, from engaging in financial transactions using nonpublic information, and from allowing the improper use of nonpublic information to further your private interest or that of another person. If you work for the United States Patent and Trademark Office, you will also be prohibited from acquiring an interest in a patent.

EMPLOYMENT OUTSIDE THE FEDERAL GOVERNMENT AND PERSONAL ACTIVITIES

As with financial holdings, there are no specific outside positions that employees are barred by law from holding (except a position with a foreign government, which is barred by the U.S. Constitution). However, employees will be subject to disqualification regarding matters in which an outside employer has an interest, or in which an outside client is a party, which may mean that the employment or outside activity is incompatible with holding a specific Department position. There are also some limits on compensation political appointees may receive from non-Government sources and limits on the types of activities in which appointees may engage.

Payments from Former Employers

If you will be receiving any severance pay or other compensation from a former employer after you enter into Government service, you may be required to provide evidence that the amount of such payment is not related to your Federal position (which would be an improper supplementation of your Federal salary). Furthermore, Federal employees are generally barred from receiving compensation relating to representational activities before a Federal agency or Federal court, even if the representational activities are not by the employee. Thus, if you are receiving payments after appointment to the U.S. Government from a firm that has a Federal practice, such as a partnership distribution from a law firm with a Federal practice, you should discuss with an ethics official whether the payments will present any legal problem. This will likely depend on whether the amount due is a pre-set payment determined prior to your appointment.

Disqualification Requirements Regarding Former Employers and Clients

After you are appointed as a Government official, you may not work on any matter for the Government in which one of the parties is, or is represented by, someone with whom you recently (during the past two years) were employed or was a client. This restriction applies only to matters before the Government in which specific named parties are identified, such as contracts, grants, law suits, licenses, and patents; it does not apply to general policy issues, such as regulations and legislation. Furthermore, if you served as a registered lobbyist before your appointment to the Government, you will

be barred for two years from participating in a matter on which you lobbied during the two years prior to your appointment.

Disqualification Requirements Regarding Outside Employers and Organizations in Which You Are Active

You will also be disqualified from participating in matters as a Government official that will affect the financial interests of any outside (non-Federal) employer you have or an organization in which you hold a position as an officer or director. This disqualification will apply not only to matters affecting the company or organization individually, but policy matters, including regulations and legislation, affecting the entity as a member of an industry sector. A similar, but more limited disqualification will apply to organizations in which you are active, such as organizations in which you serve on a committee or organize events (but not organizations in which you pay dues and attend meetings but are not otherwise active). This more limited disqualification applies only to matters in which the organization is a party (or represents a party) before the Government. If such employment, position, or activities will impair your ability to perform your duties because of this disqualification requirement, you may be required to resign from the position or limit your activities.

Bar on Working for a Foreign Government or Holding a Position or Being Affiliated with Certain Firms

You may not be a foreign agent or be employed by a foreign government while you serve as an employee of the United States Government. All Federal officers and employees are barred by the Emoluments Clause of the United States Constitution from holding a position with a foreign government, which may include a foreign corporation, foreign university, or international organization composed of foreign governments in some cases. Political appointees are also barred from serving with a professional organization that provides services in a fiduciary capacity (such as a law firm) or being affiliated with such a firm.

Limits on Outside Earned Income

There are limits on the compensation you may receive from outside employment if you will serve as a senior political appointee (meaning an appointee in the Senior Executive Service, Senior Foreign Service, in an Executive Level position, in a Presidential appointee position that requires Senate confirmation, or a position at a similar level). Presidential appointees in Senate-confirmed positions may not receive any outside earned income. For other senior political appointees, outside earned income is limited to not more than \$29,895 (*pro rated* based on when during the year you joined the Government). Furthermore, senior political appointees are required to receive prior approval from an ethics official in order to receive any income from teaching. Contact a Commerce ethics attorney if you anticipate doing any outside work during the period of your Federal employment.

Representing Others before the Federal Government

You may not serve as someone's representative before a Federal agency or federal court while you serve in the United States Government. Representation includes acting as an agent or attorney or, if paid, any communication to a Federal agency or court on behalf of someone other than yourself with the intent to influence Government action. This restriction even applies to communications made on behalf of a family member, although with prior approval such communications may be allowed regarding a spouse, parent, child, or someone for whom you are a legal guardian. You also may not receive payments based on the representational activities of others before Federal agencies or courts, which may be the case, for example, if you are a partner in a law firm or consulting firm that has a Federal practice and receive payments based on the activities of others in the firm.

GIFTS

Federal employees are subject to limits on gifts they may accept from anyone with interests before their agency. Because of the broad scope of the responsibilities of the Department of Commerce, a gift from almost any company or organization would be covered by this rule, although exceptions allow you to accept gifts in a number of circumstances, such as gifts from friends and relatives, gifts of minimal value (in most cases), and invitations to receptions and other widely-attended events (after you receive approval). However, gifts from lobbying organizations to political appointees are barred in most cases.

Gifts and Parties Upon Appointment to the Government

If you anticipate receiving gifts or a party in your honor after your appointment to the Government from a former employer or others, such as a farewell party or a party to celebrate your new position, please speak with a Commerce ethics official about whether such an event will present a problem and whether it can be organized in such a way as to avoid legal problems.

POLITICAL ACTIVITIES

You may be politically active and hold a position in a political organization, even after being appointed to the United States Government (unless you are appointed to a career Senior Executive Service position). However, you must be careful not to engage in any political activities while on duty or on Government premises (unless you are a Presidential appointee in a Senate-confirmed position). You will also need to be careful not to use any Government resources (such as access to the internet or an email account) for political purposes.

Restrictions on Political Activities When Off-Duty

When off-duty, you will be subject to two restrictions regarding political activities.

You may not ask for or accept a political contribution for a candidate or political party—in other words, you may not personally engage in any political fund-raising, such as by hosting a fund-raiser, serving on a host committee, or even just inviting others to a fund-raiser—but you may attend a fund-raiser and give a contribution to a candidate or party.

You may not run for office in a partisan election (meaning an election in which candidates are identified by party affiliation), except as an independent candidate in certain jurisdictions (including Washington, D.C. and its suburbs).

RESTRICTIONS AFTER LEAVING FEDERAL SERVICE

After you leave Government service you will be subject to some restrictions, primarily concerning contacting the United States Government on behalf of someone other than yourself.

Restrictions on Contacting the Federal Government and on Disclosing Nonpublic Information

After you leave Federal service you will be barred from:

- using or disclosing nonpublic information to which you had access as a Federal employee;
- contacting a Federal agency or Federal court on behalf of someone other than yourself to influence Government action regarding a matter involving specific parties on which you worked or, for two years, on which you did not work but which was under your official responsibility during your last year of service;

- if you are a senior employee (base pay of \$176,201 or more), contacting anyone in your former agency on behalf of someone other than yourself to influence Government action for one year after you leave the Department;
- if you are a senior employee, represent a foreign government before any Branch of the United States Government (and from assisting or advise a foreign government in its dealings with the United States Government) for one year; and
- if you are a political appointee, lobbying (providing services requiring registration under the Lobbying Disclosure Act) your former agency for two years after leaving Federal service;
- if you are a political appointee, lobbying before any Presidential appointee or noncareer SES member for the remainder of the President's term;
- if you are a political appointee, engage in any activity on behalf of a foreign government or foreign political party as a registered foreign agent for two years after termination or the remainder of the Administration, whichever is later.

DISCLOSURE OF FINANCIAL INTERESTS, LIABILITES, AND NON-FEDERAL POSITIONS

If you are appointed to a political appointee position or SES position, you will be required to file a public financial disclosure report within 30 days of your appointment (OGE Form 278e). You will also be required to report transactions of securities greater than \$1,000 within 30 days of the transaction. These reports will be available to members of the public upon request. If you are appointed to a different position, you may be required to file a confidential financial disclosure report (OGE Form 450), which will not be available to the public. Updated reports will need to be filed annually.

Information That must Be Disclosed

On financial disclosure reports you must list:

- assets you hold (and their value if you file an OGE Form 278e);
- sources of income (and the amount of income if you file an OGE Form 278e);
- liabilities over \$10,000;
- agreements you have with prior or future employers; and
- positions you hold outside the Federal Government.

You will need to file a new report every year, which will also include gifts you received during your Federal service (and information on the amount and dates of purchases and sales of financial holdings if you file an OGE Form 278e). Please be prepared to keep records on such information.

Transaction Reports and Notices of Employment Negotiations

In addition, if you are appointed as a political appointee or SES member (or at a similar level), you will be required to file a Transaction Report within 30 days of learning of a spouse and minor children) (and no later than 45 days from the date of the transaction).

You will also be required to file a notice of employment negotiations with an ethics official within three days of commencing discussions regarding future employment with a non-Federal entity.

If you have a question on any of the matters addressed in this handout, or on other ethics-related issues, please contact an attorney in the Ethics Office of the Office of General Counsel at ethicsdivision@doc.gov or 202-482-5384.

Ethics Office, Office of the General Counsel, U.S. Department of Commerce
202-482-5384 – ethicsdivision@doc.gov – January 31, 2022